

TTAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Nexx Online, Inc.	)	
	)	Opposition No. _____
Opposer,	)	
	)	Serial No. 76/404,827
V.	)	
	)	
Nexx LLC	)	
	)	
Applicant.	)	



01-31-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #7C

Commissioner for Trademarks  
Box TTAB - FEE  
2900 Crystal Drive  
Arlington, VA 2202-3513

**NOTICE OF OPPOSITION**

Nexx Online, Inc. a corporation of Canada, having an office and place of business at 5255 Young Street, Suite 800, Toronto, Ontario M2N 6P4 Canada (hereinafter "OPPOSER") believes it will be damaged by registration of the mark shown in Application Serial No. 76/404,827 in International Class 41 and hereby opposes the same.

As grounds for opposition, OPPOSER alleges that:

1. Applicant, Nexx LLC, a corporation of Nevada, having an address of 3291 N. Buffalo Drive, Las Vegas, Nevada 89129 (hereinafter "APPLICANT"), seeks to register LIVE LIFE AT THE **NEXX** LEVEL as a trademark for "training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services" in International 41. The application was published for opposition at page TM 559 of the *Official Gazette* of January 14, 2003.

02/10/2003 MPETTY 00000101 76404827

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2. OPPOSER is an established leader in delivering web hosting infrastructure for companies and businesses around the world. OPPOSER offers its customers and clients high quality web site development and web hosting services under its NEXX trademark. The OPPOSER'S web hosting and web development services which are sold under the NEXX trademark are known to members of the general public in the United States, Canada and in many countries around the world.

3. OPPOSER has filed an application to register its NEXX trademark in the United States Patent and Trademark Office, Serial No. 75/700,372. The application was filed June 2, 1999, asserting a priority date of March 9, 1999, for the following services in International Class 42: "Hosting the web sites of others on a computer server for a global computer network; and designing and implementing web sites for others with electronic commerce capabilities." As set forth in its application, OPPOSER'S NEXX trademark was first used anywhere on March 20, 1996, and first used in commerce on December 1, 1996.

4. Opposer has superior rights in and to the NEXX trademark because its priority date and usage for the mark long predate the filing date of Applicant's intent-to-use application.

5. The OPPOSER has been using its trademark and trade name NEXX continuously for more than six years in the United States and has spent considerable time, effort and money in advertising and promoting its web

hosting services as well as a variety of promotional goods under the NEXX trademark, via the internet and in global computer networks. By virtue of its extensive use and promotional activities, Opposer has established extremely valuable goodwill in its NEXX trademark. Moreover, the NEXX trademark has through years of usage become a famous trademark.

6. APPLICANT'S trademark application (Serial No. 76/404,827) is based upon an intent to use LIVE LIFE AT THE **NEXX** LEVEL for " training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services." APPLICANT has also filed three other trademark applications which incorporate OPPOSER'S NEXX trademark:

LIVE LIFE AT THE **NEXX** LEVEL, Serial No. 76/404,826 -- This ITU application was filed on May 6, 2002, in Class 35 for "Multi-level marketing business services."

NEXX & design, Serial No.76/404,828 -- This ITU application was filed on May 6, 2002, in Class 41 for "Training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services."

NEXX & design, Serial No.76/404,829 -- This ITU application was filed on May 6, 2002, in Class 35 for "Multi-level marketing business services."

A review of these applications shows that APPLICANT is using OPPOSER'S NEXX word mark alone and in combination with other words or designs as applied to services which are confusingly similar to those offered by Opposer.

7. APPLICANT'S alleged mark LIVE LIFE AT THE **NEXX** LEVEL incorporates OPPOSER'S well established NEXX trademark in its entirety and in fact prominently highlights "**NEXX**" in bold capital letters. Therefore, actual and prospective purchasers of multi-level marketing business services are likely to be confused, mistaken or deceived as to the source of origin, sponsorship, affiliation or approval of those services. APPLICANT'S use of its alleged mark has already caused actual confusion in the market place.

8. APPLICANT's use and registration of the alleged mark LIVE LIFE AT THE **NEXX** LEVEL is also likely to cause a dilution of the distinctive quality of Opposer's famous NEXX trademark.

9. Upon information and belief, APPLICANT has not used its alleged mark LIVE LIFE AT THE **NEXX** LEVEL in commerce before the May 6, 2002 filing date of its intent-to-use application.

10. Upon information and belief, at the time APPLICANT filed Application Serial No. 76/404,827, it had or should have had full knowledge of the prior adoption and extensive use of the trademark NEXX by OPPOSER and its pending application for federal trademark registration.

11. Upon information and belief, APPLICANT incorporated its business under the designation NEXX LLC on or about November 7, 2001.

WHEREFORE, OPPOSER prays that this opposition be sustained.

OPPOSER hereby designates and appoints the firm of Holland & Knight LLC, 55 West Monroe Street, Suite 800, Chicago, Illinois 60603, Telephone

312.578.6689 or 312.263.3600 to act as its domestic representative on whom may be served notices or process in this proceeding and to act as its attorneys in the matter of the above-identified Opposition with full power of substitution and revocation to prosecute this Opposition and to transact all business in the United States in connection with this Opposition and to transact all business in the United States courts in connection with this Opposition; to sign its name to all papers which may hereafter be filed in connection with said Opposition; to receive all official communications related to the same; and further directs that all correspondence be forwarded to:

Scott W. Petersen  
Holland & Knight LLC  
55 West Monroe Street, Suite 800  
Chicago, IL 60603  
(312) 263-3600

The Opposition filing fee in the amount of \$300.00 is submitted herewith along with two extra copies of this Opposition.

Respectfully submitted,

NEXX ONLINE, INC.

Date: Jan. 28, 2003

By: Scott W. Petersen  
Scott W. Petersen  
Lewis T. Steadman Jr.  
Holland & Knight LLC  
55 West Monroe, Suite 800  
Chicago, Illinois 60603  
312.263.3600  
312.578.6689 (direct dial)  
312.578.6540 Fax  
Attorneys for Opposer

**CERTIFICATE OF MAILING**

I hereby certify that this NOTICE OF OPPOSITION is being deposited in triplicate with the United States Postal Service as First Class Mail in an envelope addressed to:

Commissioner for Trademarks  
2900 Crystal Drive  
BOX TTAB FEE  
Arlington, VA 22202-3513

On

Jan. 28, 2003

By:

Scott W. Steen

Attorneys for Opposer

CHI1 #177599 v3



## UNITED STATES PATENT AND TRADEMARK OFFICE

## Trademark Electronic Search System (TESS)

TESS was last updated on Thu Jan 9 04:31:17 EST 2003

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURE	FREC FORM	BROWSE DOC	BOTTOM	HELP	
CURR LIST		FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

Please logout when you are done to release system resources allocated for you.

List At:

OR

to record:

**Record 5 out of 18**


*(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)*

# Live life at the NEXX level

<b>Word Mark</b>	LIVE LIFE AT THE NEXX LEVEL
<b>Goods and Services</b>	IC 041. US 100 101 107. G & S: Training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services
<b>Mark Drawing Code</b>	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
<b>Serial Number</b>	76404827
<b>Filing Date</b>	May 6, 2002
<b>Filed ITU</b>	FILED AS ITU
<b>Owner</b>	(APPLICANT) NEXX LLC LIMITED LIABILITY COMPANY NEVADA 3291 N. Buffalo Drive Las Vegas NEVADA 89129
<b>Attorney of Record</b>	Jacqueline S. Ackerman, Esq.
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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<a href="#">PTO HOME</a>	<a href="#">TRADEMARK</a>	<a href="#">TESS HOME</a>	<a href="#">NEW USER</a>	<a href="#">STRUCTURED</a>	<a href="#">FREE FORM</a>	<a href="#">BROWSE LISTS</a>	<a href="#">TOP</a>	<a href="#">HELP</a>	<a href="#">FEEDBACK</a>
<a href="#">CURR LIST</a>	<a href="#">NEW LISTS</a>	<a href="#">FIRST DOC</a>	<a href="#">PREV DOC</a>	<a href="#">NEXT DOC</a>	<a href="#">LAST DOC</a>				



Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2003-01-09 17:11:19 ET

**Serial Number:** 76404827

**Registration Number:** (NOT AVAILABLE)

**Mark**

Live life at the **NEXX** level

**(words only):** LIVE LIFE AT THE NEXX LEVEL

**Current Status:** Final review prior to publication has been completed, application will be published for opposition.

**Date of Status:** 2002-12-03

**Filing Date:** 2002-05-06

**The Information will be/was published in the Official Gazette on** 2003-01-14

**Registration Date:** (DATE NOT AVAILABLE)

**Law Office Assigned:** TMEG Law Office 101

**Attorney Assigned:**  
KING LINDA M Employee Location

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2002-12-03

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**CURRENT APPLICANT(S)/OWNER(S)**

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1. NEXX LLC

**Address:**  
NEXX LLC  
3291 N. Buffalo Drive  
Las Vegas, NV 89129  
United States  
**State or Country Where Organized:** Nevada

**Legal Entity Type:** Other

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**GOODS AND/OR SERVICES**

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Training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services

**International Class:** 041

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 1(b)

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2002-12-25 - Notice of publication

2002-11-06 - Approved for Pub - Principal Register (Initial exam)

2002-11-01 - Examiner's amendment mailed

2002-10-25 - Non-final action mailed

2002-10-08 - Case file assigned to examining attorney

2002-09-25 - Case file assigned to examining attorney

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**CONTACT INFORMATION**

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**Correspondent (Owner)**

Jacqueline S. Ackerman, Esq. (Attorney of record)

JACQUELINE S. ACKERMAN, ESQ.  
SKLAR WARREN CONWAY & WILLIAMS LLP  
221 NORTH BUFFALO DRIVE, SUITE A  
LAS VEGAS, NEVADA 89145  
United States

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